

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

))
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Centre Hall, Mount Union, and)
and Huntingdon, Pennsylvania))MB Docket No. 03-231
RM-10818**REPORT AND ORDER**
(Proceeding Terminated)**Adopted: January 5, 2005****Released: January 10, 2005**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division of the Media Bureau has before it for consideration the *Notice of Proposed Rulemaking* ("Notice")¹ proposing changes in the FM Table of Allotments, 47 C.F.R. § 73.202(b). In response to a petition filed by Megahertz Licenses, LLC ("Megahertz"), licensee of Station WXMJ(FM), Channel 258A, Mount Union, Pennsylvania, and of WWLY(FM), Channel 292A, Huntingdon, Pennsylvania, the *Notice* proposes to change the community of license for WXMJ(FM) from Mount Union to Centre Hall, Pennsylvania, and to change the FM Table of Allotments accordingly.² In order to facilitate those changes, the *Notice* further proposes to change the community of license for WWLY(FM) from Huntingdon to Mount Union, Pennsylvania, and to make corresponding changes in the FM Table of Allotments. Megahertz's request was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules,³ which permits the modification of a station's authorization to specify a new community of license without affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment. Megahertz represents that if its requests are granted, it will file applications for the new facilities and will implement those applications expeditiously. Megahertz filed comments and reply comments supporting the changes proposed in the *Notice*. Comments and reply comments also were filed by Dame Broadcasting, LLC ("Dame").

¹ See *Mt. Union, Huntingdon, Centre Hall, and South Williamsport, Pennsylvania*, 18 FCC Rcd 23741 (MB 2003).

² Megahertz initially requested that Channel 258A be upgraded to Channel 258B1 for reallocation at Centre Hall, and asked that the reference coordinates of Radio Station WZKR(FM), Channel 257A, South Williamsport, Pennsylvania, be modified to facilitate that upgrade. Megahertz has subsequently asked to withdraw its proposal to upgrade Channel 258A and to modify the reference coordinates of Channel 257A at South Williamsport. See "Petition for Leave to Accept Amendment to Comments" and "Amendment to Comments" (both filed October 4, 2004). Megahertz's request reflects our recent holding in *Gunnison, Crawford, and Olathe, Breckenridge, Eagle Fort Morgan, Greenwood Village, Loveland, and Strasburg, Colorado, and Laramie, Wyoming*, 19 FCC Rcd 18542 (MB 2004) ("*Gunnison*"), ruling that the Commission will not accept proffers of hypothetical site relocations to change reference points for licensed stations. We agree with Megahertz that the holding in *Gunnison*, released during the pendency of this proceeding, warrants acceptance of Megahertz's timely amendment to its proposal, and we further find that no prejudice would result from accepting the amendment.

³ 47 C.F.R. §1.420(i).

2. In determining whether to approve a change of community, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁴ No white or gray areas would be created by adoption of the proposed change of allotments, whereas adoption of the proposal would provide a second aural reception service to 1,844 persons, thus satisfying priority two under the Commission's allotment priorities.⁵ In addition, adoption of the proposal would not remove a sole local service from any community,⁶ but rather would afford a first local service to Centre Hall, thus satisfying priority three of the Commission's allotment priorities. Based upon a comparison of the arrangement of allotments, Megahertz's proposal, satisfying both allotment priorities two and three, is superior to the present arrangement of allotments, which satisfies only priority four, "other public interest matters."

3. Dame, however, argues in its comments and reply comments that the proposal does not pass muster under our *Tuck* policy,⁷ because Centre Hall is not independent of State College, Pennsylvania, the primary city in the State College Urbanized Area. Although Centre Hall is outside the State College Urbanized Area, we will evaluate Megahertz's proposal under *Tuck* because the allotment at Centre Hall would provide more than 50 percent coverage of the urbanized area. In *Tuck*, the Commission specified the following three factors for evaluating a community's independence: (1) signal population coverage, *i.e.*, the degree to which the proposed station will provide service to both the suburban community and the larger metropolis; (2) the size and proximity of the suburban community relative to the metropolis; and (3) the interdependence of the suburban community with the metropolis. Of these three factors, the most significant is the third.⁸

4. Station WXMJ(FM) currently does not cover any portion of any urbanized area, but the proposed reallocation of Channel 258A at Centre Hall would provide 50.4 percent coverage of the State College Urbanized Area.⁹ As to the relative size of Centre Hall and State College, Centre Hall's

⁴ 90 FCC 2d 88 (1982), *recon. denied*, 56 RR 2d 448 (1983). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

⁵ Adoption of the proposal would provide a second, third, fourth, or fifth reception to a total of 11,000 persons, and would leave 1,374 persons with four services in a small (42 square kilometers) portion of the loss area.

⁶ Huntingdon would be left with one FM and one full-time AM radio station (Radio Stations WLAK(FM) and WHUN(AM), respectively), and Mount Union would continue to have one FM radio station.

⁷ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*").

⁸ *Tuck*, *supra*. See also *Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama*, 6 FCC Rcd 6,580 ¶23 (M.M.Bur. 1991), *app. for rev. dismissed*, 12 FCC Rcd 8392 (M.M.Bur. 1997).

⁹ Although the *Notice* states that the proposed allotment at Centre Hall would provide 100 percent coverage of the State College Urbanized Area, that figure reflects a proposed upgrade from Channel 258A to Channel 258B1. Megahertz has withdrawn its request for an upgrade, so coverage of the State College Urbanized Area has decreased.

population of 1,079 persons represents approximately 1.5 percent of the population of State College.¹⁰ In past proceedings, the Commission has granted change of community requests involving greater size disparities between the population of the proposed community and that of the central city of the urbanized area.¹¹ Moreover, FM stations have been allotted to numerous communities the size of Centre Hall or smaller. Although Centre Hall is only ten miles from State College, change of community proposals have been approved in instances where the new community was closer to the central city than is the case in this proceeding.¹² Neither the extent of signal coverage, nor the relative size or proximity of Centre Hall and State College, precludes a finding that Centre Hall is an independent community for allotment purposes.

5. Turning to the most important consideration, the interdependence of the proposed community with the primary city in the urbanized area, Megahertz cites a number of factors supporting its contention that Centre Hall is an independent community, rather than dependent upon State College for its existence. Centre Hall, founded in 1846 and incorporated in 1885, has its own local government and elected officials. The Borough of Centre Hall has a council, consisting of seven members and presided over by an elected Mayor. Centre Hall has three full-time and 10 part-time employees, including a constable, zoning officer, and tax collector. A District Justice serving the Boroughs of Centre Hall and Millheim is located in Centre Hall. Centre Hall has its own elementary school as well as a private primary and middle school. Centre Hall imposes a property tax and an earned income tax, and the borough provides fire, water, and sewage services to the community. Centre Hall has its own ZIP code (16828), post office, and public library branch of the county library system. Numerous businesses are located within Centre Hall, many of which specifically identify themselves as Centre Hall establishments. A number of health care providers are located in Centre Hall, as are several churches. Although Centre Hall does not have a local newspaper, the community has its own website, "www.centerhall.com," which publicizes town attractions and events and advertises Centre Hall businesses. Businesses in and near Centre Hall provide substantial employment opportunities for Centre Hall residents. Finally, Centre Hall residents strongly support the proposed allotment at Centre Hall, stating that Centre Hall residents are not dependent upon State College, but rather are able to obtain most or all necessary goods and services from Centre Hall establishments.

6. Although Dame argues that the average travel time for Centre Hall residents to reach their places of employment suggests strong ties to State College, we need not infer that a large percentage of Centre Hall residents are employed in State College rather than in Centre Hall or other nearby small communities. Moreover, this factor alone is insufficient to overcome the many other considerations

¹⁰ State College has a population of 71,309 persons.

¹¹ See *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (M.M.Bur. 1996) (Newcastle had population equal to 0.9 percent of Oklahoma City), and cases cited therein. See also *Scotland Neck and Pinetops, North Carolina*, 7 FCC Rcd 5113 (1992) (size disparity outweighed by other factors).

¹² See, e.g., *Mullins and Briarcliffe Acres, South Carolina*, 14 FCC Rcd 10516 (M.M.Bur. 1999) (new community of allotment four miles from the central city of the urbanized area).

supporting a finding that Centre Hall qualifies as an independent community. We therefore find that Centre Hall is independent of State College and is a community deserving of its own local radio service.

7. In the alternative, Dame argues that, should we find Centre Hall to be an independent community under *Tuck*, we should order a dual community allotment for Centre Hall and Boalsburg, to be served by existing Station WBUS(FM) (Channel 229A, Boalsburg), of which Dame is the licensee. This proposal cannot be considered in this proceeding, because it does not conflict with any component of Megahertz's allotment proposal and is not, therefore, a valid counterproposal. In addition, even if we were to consider Dame's proposal as an alternative allotment change, the Megahertz proposal, meeting priorities two and three under the Commission's allotment priorities, still would be preferred. We therefore reject Dame's alternative proposal for a dual allotment to Boalsburg and Centre Hall.

8. For all of the foregoing reasons, we conclude that the public interest would be served by reallocating Channel 258A, from Mount Union to Centre Hall, Pennsylvania, and by reallocating Channel 292A, from Huntingdon to Mount Union, Pennsylvania. Channel 258A can be allotted at Centre Hall in compliance with the minimum distance separation requirements of the Commission's Rules with no site restriction at center city reference coordinates: 40-50-50 North Latitude and 77-41-10 West Longitude. Channel 292A can be allotted at Mount Union in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 14.5 kilometers (9.0 miles) south of Mount Union at the following reference coordinates: 40-15-18 North Latitude and 77-51-41 West Longitude. Centre Hall, Mount Union, and Huntingdon, Pennsylvania, all are located within 320 kilometers (199 miles) of the Canadian border, and therefore Canadian concurrence in the allotment changes will be required. Although concurrence has been requested for these allotment changes, notification has not been received. If a construction permit is granted for Centre Hall or Mount Union prior to the receipt of formal concurrence in the corresponding channel allotment by the Canadian government, the construction permit will include the following condition: "Operation with the facilities specified for [Centre Hall or Mount Union] herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA-Canada FM Broadcast Agreement."

9. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. §801(a)(A).

10. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b), 0.283, and 1.420(i), IT IS ORDERED, That effective February 25, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel Number</u>
Centre Hall, Pennsylvania	258A
Huntingdon, Pennsylvania	278A
Mount Union, Pennsylvania	292A

11. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of

Megahertz Licenses, LLC, for Station WXMJ(FM), Channel 258A, Mount Union, Pennsylvania, IS MODIFIED to specify operation on Channel 258A at Centre Hall, Pennsylvania, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

12. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Megahertz Licenses, LLC, for Station WLLY(FM), Channel 292A, Huntingdon, Pennsylvania, IS MODIFIED to specify operation on Channel 292A at Mount Union, Pennsylvania, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

13. Pursuant to 47 C.F.R. Section 1.1104(1)(k) and (3)(l), any party seeking a change in community of license of a TV or FM allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Megahertz Licenses, LLC, licensee of Stations WXMJ(FM) and WLLY(FM), is required to submit a rule making fee in addition to the fees required for the applications to effectuate the changes specified above.

14. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this Order to the following:

Allen G. Moskowitz
Kaye Scholer, LLP
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John G. Holland
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15. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

16. For further information concerning this proceeding, contact Deborah Dupont, Media Bureau,
(202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau